

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ARIC JEFFREY INGLETT
Claimant

VS.

RAYTHEON AIRCRAFT CO.
Self-Insured Respondent

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Docket No. 1,013,773

ORDER

Claimant requests review of the February 5, 2004 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The issue raised at the preliminary hearing was whether claimant was entitled to temporary total disability compensation. The claimant argued that he was entitled to temporary total disability compensation during the time he was receiving medical treatment and had been provided temporary restrictions by the authorized treating physician.

Respondent argued that claimant was not temporarily and totally disabled from engaging in substantial and gainful employment as demonstrated by claimant's admission that he was receiving unemployment compensation benefits, was actively seeking work and would accept any offered job.

The Administrative Law Judge (ALJ) found that claimant was not temporarily and totally incapable of engaging in any substantial and gainful employment. The ALJ noted the temporary medical restrictions issued by the treating physician would not prevent claimant from engaging in substantial and gainful employment and therefore denied claimant's request for temporary total disability compensation.

The claimant requests review of whether the ALJ erred in denying the temporary total disability compensation beginning November 7, 2003, when he was laid off work with respondent. Claimant argues that pursuant to K.S.A. 44-510c(b)(2) the temporary medical restrictions imposed by the treating physician from November 7, 2003, through his release on February 5, 2004, rendered him temporarily and totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

This is an appeal from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?¹

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

An ALJ has the jurisdiction and authority to grant or deny temporary total disability benefits at a preliminary hearing. Therefore, the Judge did not exceed her jurisdiction. The issue of whether claimant's medical condition and employment situation entitles claimant to receive temporary total disability benefits is not an issue that is reviewable from a preliminary hearing order. At this juncture of the proceeding, the Board does not have the authority to reweigh the evidence and redetermine if claimant is temporarily and totally disabled.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁴

¹ K.S.A. 44-534a(a)(2) (Furse 2000).

² K.S.A. 2003 Supp. 44-551.

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683, P.2d 902 (1984).

⁴ K.S.A. 44-534a(a)(2) (Furse 2000).

WHEREFORE, the Board dismisses the claimant's appeal of the February 5, 2004 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

IT IS SO ORDERED.

Dated this _____ day of March 2004.

BOARD MEMBER

c: W. Walter Craig, Attorney for Claimant
Roger E. McClellan, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director